



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

October 22, 2021

Department of Homeland Security, United States Citizenship and Immigration Services
Via electronic submission

Re: **Public Charge Ground of Inadmissibility**
DHS Docket No. USCIS-2021-0013; CIS No. 2696-21; RIN 1615-AC74

Introduction

The City of New York (“the City” or “NYC”) and its municipal hospital system, NYC Health + Hospitals welcome the opportunity to submit this comment in response to the Department of Homeland Security’s (“DHS”) Advance Notice of Public Rulemaking regarding the *Public Charge Ground of Inadmissibility*.

In addition to NYC Health +Hospitals, the New York City Mayor’s Office of Immigrant Affairs (“MOIA”), Department of Social Services (“DSS”), Department of Health and Mental Hygiene (“DOHMH”), Housing Authority (“NYCHA”), and Department of Housing Preservation and Development (“HPD”) contributed to this comment. As government agencies responsible for immigrant well-being and inclusion, and provision of public benefits and services as described below, we appreciate DHS’ stated intention to propose a rule that is clear, predictable, fair, and presented in a manner that avoids deterring immigrants from using benefits for which they are lawfully eligible.

MOIA promotes the wellbeing of the City’s immigrant residents through programs, policy recommendations, and community engagement efforts that facilitate their successful integration into the civic, cultural, and economic life of New York. Using this multipronged approach, MOIA works to eliminate barriers to opportunity, promote immigrant rights, expand civic engagement, and further the empowerment of immigrant New Yorkers.

DSS, which includes the Human Resources Administration (“HRA”), is the nation’s largest social services agency assisting over three million New Yorkers annually through the administration of public assistance programs including cash assistance, employment programs, food stamps (“SNAP”), public health insurance and other supports that help New Yorkers meet essential needs and remain in the workforce. HRA plays a role in the administration of housing programs such as supportive housing, and services designed to assist individuals who are experiencing chronic homelessness, individuals with HIV/AIDS, individuals with serious mental illness and/or survivors of domestic violence, among others. HRA also administers rental assistance programs and NYC’s first-in-the-nation right to counsel program to provide tenants

with representation and assistance. In administering these programs, HRA is at the forefront of this Administration's efforts to combat poverty and address homelessness. Much of our work focuses on advancing one of NYC's chief priorities: reducing income inequality and leveling the playing field for all New Yorkers.

DOHMH is one of the largest public health agencies in the world, and is the nation's oldest public health agency, with more than 200 years of leadership in the field. Among its many services is to protect and promote the healthcare of 8.5 million diverse New Yorkers. DOHMH studies the patterns, causes and effects of health and disease conditions in NYC, and operates clinics that offer New Yorkers sexual health, immunization, and tuberculosis ("TB") services.

NYCHA, the largest public housing authority in North America, was created in 1935 to provide decent, affordable housing for low- and moderate-income New Yorkers. NYCHA is home to roughly 1 in 15 New Yorkers across over 177,000 apartments within 335 housing developments. NYCHA serves over 350,000 residents through the conventional public housing program (Section 9), over 20,000 residents at developments that have been converted to PACT/RAD, and over 75,000 families through federal rent subsidies (the Section 8 Leased Housing Program). In addition, NYCHA connects residents to opportunities in financial empowerment, business development, career advancement, and educational programs. With a housing stock that spans all five boroughs, NYCHA is a city within a city.

HPD is the nation's largest municipal housing preservation and development agency. Its mission is to promote quality housing and diverse, thriving neighborhoods for New Yorkers through loan and development programs for new affordable housing, preservation of the affordability of the existing housing stock, enforcement of housing quality standards, and educational programs for tenants and building owners. HPD is tasked with advancing the goals of the City's housing plan—a critical pillar of Your Home NYC, Mayor de Blasio's comprehensive approach to helping New Yorkers get, afford, and keep housing.

NYC Health + Hospitals is the largest public health care system in the United States, providing essential inpatient, outpatient, and home-based services to more than one million New Yorkers every year in more than 70 locations across the City's five boroughs. With 11 acute-care hospitals, five long-term care facilities and a network of community-based health care clinics through Gotham Health, the largest Federally Qualified Health Center in the United States, its diverse workforce empowers New Yorkers, without exception, to live the healthiest life possible. The NYC Health + Hospitals mission is to provide care to everyone, regardless of ability to pay, immigration status, gender identity, disability, or national origin. As such, it is a crucial part of the NYC Health + Hospitals mission to provide accessible, culturally, linguistically appropriate services to ensure full access to comprehensive and quality care for all New Yorkers. At NYC Health + Hospitals, patients who receive care belong to many different racial and cultural backgrounds. An estimated 30% of patients served are limited English proficient, and more than 60% of patients self-identify as either Black/African American, Hispanic/ Latino, or Asian.

The City's and NYC Health + Hospitals' experiences in recent years—endeavoring to ensure access to services for immigrants against the backdrop of federal changes to public charge—compel us to comment. Implementation of public charge regulations as undertaken by the Trump Administration caused extensive fear and confusion in immigrant communities and created significant burdens for the City, negatively impacting our ability to administer benefits and services to New Yorkers in need. These challenges were exacerbated by the COVID-19 pandemic. Now in the recovery phase, the City continues to devote resources to combat the harmful effects of the 2019 public charge rule.

New York City's Immigrant Communities

New York City is the ultimate city of immigrants. Over 3.2 million New Yorkers are immigrants—nearly 40% of the City's total population.¹ The connections of immigrant New Yorkers are deeply woven throughout the fabric of the City, with almost 60% of residents living in households with at least one immigrant. Immigrants also make significant contributions to the prosperity of the city—they own half of the City's businesses, and in 2019 contributed \$244 billion to the City's Gross Domestic Product (approximately 23% of the City's total). Furthermore, the children of immigrants, as adults, contribute more in taxes per capita than either of their parents, or the rest of the U.S.-born population.²

Immigrant New Yorkers participate in the labor force at the same or greater rates as U.S.-born New Yorkers. However, their median earnings are lower—\$38,200 compared to \$52,500 for those U.S.-born. Moreover, median earnings vary by immigration status, with naturalized citizens highest among immigrants at \$44,750, and green card holders/nonimmigrants and undocumented immigrants much lower, at \$31,310 and \$30,000, respectively. These differences contribute to immigrant communities in NYC facing higher likelihoods of living in poverty than those born in the U.S.

Despite lower median earnings and higher risk of poverty, the work of immigrants is essential, as was made clear during the COVID-19 pandemic. Throughout the pandemic, immigrant New Yorkers made up a majority of the frontline essential workers, operating in-person to keep the City running while stay-at-home orders were in place. Immigrant workers represent about 58% of the workforce in essential occupations.³ At the same time, immigrant communities have experienced disproportionate health, mortality, and economic impacts in connection with the pandemic.⁴

¹ 2020 NYC Mayor's Office of Immigrant Affairs Annual Report, <https://www1.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2020.pdf>.

² National Academies of Sciences, Engineering, and Medicine. 2017. *The Economic and Fiscal Consequences of Immigration*. Washington, DC: The National Academies Press, available at <https://doi.org/10.17226/23550>.

³ Declaration of Sabrina Fong at page 5, *State of New York v United States Department of Homeland Security*, No 1:19-cv-07777-GBD (S.D.N.Y., Sept. 9, 2019); New York State Comptroller, *New York City's Frontline Workers*, <https://comptroller.nyc.gov/reports/new-york-citys-frontline-workers/>.

⁴ NYC Mayor's Office of Immigrant Affairs, Mayor's Office for Economic Opportunity, Department of Consumer and Worker Protection, *Fact Sheet: COVID-19 Health and Economic Impacts on Immigrant Communities (2020)*, available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/covid-immigrantfact-sheet-20200731.pdf>.

As evident from the above data, immigrant New Yorkers may experience economic hardships despite the fact that they are working, frequently in essential roles. The COVID-19 pandemic has compounded this. To help address these economic barriers, the City invests time and resources to ensure that New York’s immigrant communities are able to access the benefits and services for which they are eligible. As the City observed in recent years in relation to the 2019 Final Rule, an overly complex, “wealth test” approach to the public charge rule that penalizes immigrants based on the economic realities they face, and deters them from seeking services and benefits they need, undermines these municipal investments and is detrimental to the health and economic well-being of NYC as a whole.

New York City’s Response to the 2019 Final Rule

Given the tremendous impacts presented by the 2019 Final Rule and DHS’ regulatory process in issuing it, the City undertook a robust, multi-pronged response, beginning in early 2018.

The City engaged in both administrative and legal advocacy related to the rule, taking two meetings with the U.S. Office of Management and Budget’s Office of Information and Regulatory Affairs to call attention to the proposed rule’s economic impacts, submitting two regulatory comments on the proposed rule in 2018, and litigating against the final rule once issued in 2019.⁵ In March 2020, as it became clear that the rule’s chilling effect in immigrant communities was jeopardizing government efforts to stem the harms of the COVID-19 pandemic, MOIA, DSS, DOHMH, and NYC Health + Hospitals sent a letter to DHS urging that implementation of the then-effective rule be halted. Following DHS’ refusal to stop implementing the rule, the City sought injunctive relief from the U.S. Supreme Court and then the U.S. District Court for the Southern District of New York.

To more fully understand the impacts of the 2018 proposed rule and 2019 Final Rule on immigrant communities and NYC as a whole, the City also conducted reviews and issued publications on the potential effects of the proposed rule on poverty and the City’s economy⁶; fact sheets on enrollment trends in SNAP and WIC (discussed further below)⁷; a survey of public

⁵ Declaration of Bitta Mostofi, State of New York v United States Department of Homeland Security, No 1:19-cv-07777-GBD (S.D.N.Y., Sept. 9, 2019); City of New York, Comment re: DHS Docket No. USCIS-2010-0012, Proposed Rule: “Inadmissibility on Public Charge Grounds” (Dec. 10, 2018), available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/comments/nyc_comment_pdf_uscis_2010_0012_2018_12_10.pdf; Cities of Chicago and New York City et al., Comment in Opposition to DHS Docket No. USCIS-2010-0012 (Dec. 10, 2018), available at <https://www1.nyc.gov/assets/home/downloads/pdf/press-releases/2018/Multi-City-Legal-Comment-Public-Charge-12-10-18.pdf>.

⁶ NYC Mayor’s Office of Immigrant Affairs, Mayor’s Office for Economic Opportunity, Department of Social Services, Research Brief: Expanding Public Charge Inadmissibility: The Impact on Immigrants, Households, and the City of New York (2018), available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/research_brief_2018_12_01.pdf.

⁷ NYC Department of Social Services and NYC Mayor’s Office of Immigrant Affairs, Fact Sheet: SNAP Enrollment Trends in New York City (2019), available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-June-2019.pdf>; NYC Department of Health, NYC Mayor’s Office of Immigrant Affairs, NYC Department of Health & Mental Hygiene, Fact Sheet: WIC Enrollment Trends in New York City (2020), available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/fact-sheet-wic-enrollment-trends-february-2020.pdf>.

awareness of the 2018 proposed rule and effective messages for combatting the chilling effects on benefits usage⁸; and additional focus groups during the development of a large-scale public awareness campaign (“Support, Not Fear,” discussed further below).

To combat the widespread confusion and fear generated by the Trump Administration’s rulemaking efforts on public charge, from rumors and leaks circulating in the media in early 2018, through the issuance of the 2018 proposed rule, the 2019 Final Rule, and the stay and implementation of the 2019 Final Rule, the City has engaged in extensive, ongoing outreach and community engagement efforts. These have included large events such as multi-day phone banks and a multi-city tele-town hall, numerous public meetings, and one-on-one conversations with constituents.⁹ The City has also conducted multiple media and communications campaigns, created and translated a series of flyers and social media messaging toolkits, and maintained a website that is updated whenever there are federal announcements or developments impacting public charge policy. To ensure that agencies across the City were equipped with accurate information about the public charge rule and able to direct constituents and clients to legal support if they need it, the City has shared talking points and conducted trainings for staff when new developments have occurred.

The City’s public hospital system has invested significant resources to address the impacts of the public charge rule. NYC Health + Hospitals has a long history of serving the health care needs of immigrant patients and communities by connecting them with health-supporting benefits and social services for which they are eligible. Throughout the Trump Administration’s public charge rulemaking efforts, NYC Health + Hospitals publicly and repeatedly reiterated its commitment to providing care to New Yorkers who need it. Through the creation of the NYC Care program, a comprehensive and affordable health care access program and its associated community partnerships, NYC Health + Hospitals has successfully connected close to 100,000 New Yorkers with primary, preventive, and specialty care, many of them undocumented immigrants. NYC Health + Hospitals offers free legal immigration assistance to patients through a partnership with NYLAG/LegalHealth, serving approximately 2,500 immigrant patients in 2020. NYC Health + Hospitals’ commitment to immigrant patients frequently results in them successfully accessing Medicaid and other benefits, thereby curtailing the chilling effects of the 2019 Final Rule. However, NYC Health + Hospitals knows that there are patients who are fearful to seek its services, regardless of the above-described messaging and services being provided to assist those patients.

Indeed, through the community and stakeholder engagement efforts of MOIA, NYC Health + Hospitals, DOHMH, and DSS leadership and staff, we unfortunately learned of

⁸ NYC Mayor’s Office of Immigrant Affairs, NYC Fact Sheet: Public Charge Messaging Survey Findings (2019), available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/NYC-Public-Charge-Messaging-Fact-Sheet-2019-05-30.pdf>.

⁹ See Declaration of Bitta Mostofi, *State of New York v United States Department of Homeland Security*, No. 1:19-cv-07777-GBD (S.D.N.Y., Sept. 9, 2019); Declaration of Bitta Mostofi, *Department of Homeland Security v. New York*, No. 19A785 (S.Ct., Apr. 14, 2020); NYC Mayor’s Office of Immigrant Affairs Annual Reports for 2018, 2019, and 2020, available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report%202019_final.pdf, <https://www1.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2019.pdf>, and <https://www1.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2020.pdf>.

numerous harrowing accounts of individuals opting to forego benefits they needed and were eligible for, out of concerns about public charge inadmissibility. We heard repeated accounts of individuals who had little to no likelihood of ever facing a public charge determination at all—including many lawful permanent residents—questioning whether to use benefits due to confusion and fear about the public charge rule. During the pandemic, this trend presented a crisis within a crisis, as community partners shared anecdotes of individuals being afraid to seek treatment in public hospitals, even when feeling ill, or fearing COVID-19 testing—all related to concerns about immigration consequences.¹⁰

A critical strategy the City identified for combatting the public charge chilling effect was to increase the provision of legal information and counsel to individuals with concerns and questions about public charge. The City accomplished this by expanding the capacity and staffing of its immigration legal services hotline, the ActionNYC hotline, operated by Catholic Charities; dedicating contracted legal technical assistance capacity for City-funded ActionNYC legal services providers to the topic of public charge; and establishing referral pathways to the Legal Aid Society for complex public charge-related issues.¹¹

As part of ongoing COVID-19 pandemic response and recovery work, the City continues to monitor and respond to the impacts of the now-vacated rule. Unfortunately, our work to dispel confusion and fear about immigration statuses and public benefits did not end with the vacatur of the 2019 Final Rule. The City’s extensive, years-long experience responding to the harmful 2019 Final Rule provides us with a strong base of expertise to contribute to DHS’ future regulatory efforts related to public charge inadmissibility. We appreciate the opportunity to provide the following responses to DHS’ specific questions for benefit granting agencies.

Questions for State, Territorial, Local, and Tribal Benefit Granting Agencies and Nonprofit Organizations

Question One. What costs, if any, has your agency or organization incurred in order to implement changes in public charge policy, such as revising enrollment procedures and public-facing materials? Please provide relevant data.

Due to the confusion and fear generated by the 2019 Final Rule and its implementation, the City has invested significant resources to help New Yorkers understand public charge and access the benefits and services they need and are lawfully eligible for.

For example, in response to the 2019 Final Rule, MOIA and DOHMH launched a public awareness campaign to inform New Yorkers of their rights to receive City services regardless of their immigration status. The “Support, Not Fear” campaign ran for 8 weeks in May-June 2020 and 8 weeks in June-July 2021, totaling nearly \$1.2 million in expenditures for MOIA and over

¹⁰ Declaration of Bitta Mostofi, *Department of Homeland Security v. New York*, No. 19A785 (S.Ct., Apr. 14, 2020); see also Declaration of Dr. Oxiris Barbot, *Department of Homeland Security v. New York*, No. 19A785 (S.Ct., Apr. 14, 2020).

¹¹ Declaration of Bitta Mostofi, *State of New York v United States Department of Homeland Security*, No 1:19-cv-07777-GBD (S.D.N.Y., Sept. 9, 2019); Declaration of Bitta Mostofi, *Department of Homeland Security v. New York*, No. 19A785 (S.Ct., Apr. 14, 2020).

\$900,000 for DOHMH. Together, the campaign incurred costs of over \$2 million between the two agencies during FY20 and FY21. Campaign development in FY20 included focus groups held in English, Spanish, Cantonese, and Mandarin for a total cost of \$50,367. For each campaign period, the City disseminated: 30-second video and radio ad scripts in ten languages; 15-second radio ad scripts in eight languages; digital, print, and social media assets in 25 languages; and subway, bus shelter, and Staten Island ferry ads in three languages. The 2021 campaign included additional messaging around vaccine eligibility to address observed disparities in vaccine uptake among immigrant communities.

In the fall of 2018, to better assess the potential chilling effect of the proposed rule on public charge inadmissibility and identify approaches for mitigating it, MOIA commissioned a survey of citizen and non-citizen residents of NYC. The survey was conducted by the research company SSRS, at a cost to the City of \$227,375. It found that 76% of non-citizen New York City residents would consider withdrawing from or not applying to services as a result of the change to public charge inadmissibility, even despite feeling they needed the services.

DOHMH conducted a comprehensive assessment of the 2019 Final Rule's potential impacts. The 2019 Final Rule put many foreign-born New Yorkers at risk of losing access to vital health care services, creating an environment of fear in which they chose not to use the services to which they are entitled. The DOHMH assessment found that a number of City-administered programs also faced a risk of chilling effect on enrollment due to the opaque and punitive nature of the new public charge rule, including those related to health insurance enrollment, management of infectious disease, and behavioral health services. DOHMH mobilized to release timely messaging to agency and program staff to mitigate the fear created by the rule, and potential program attrition as a result. DOHMH partnered with MOIA to develop and disseminate consumer-friendly fact sheets about the scope of the rule, taking up significant staff time.

DOHMH content experts also developed and conducted both internal and external informational sessions for consumers and staff, providing real-time information on the rule's implementation status amid ongoing legal battles. Given the complicated and changing nature of the rule, outreach efforts have been ongoing. DOHMH staff have observed confusion among clients served by community-based partners, particularly related to program eligibility for behavioral health services.

In addition, NYC Health + Hospitals created a website, flyers, and social media assets messaging in the top 13 languages spoken by New Yorkers to all New Yorkers that they should seek care without fear.

In order to increase the provision of ActionNYC immigration legal services to address public charge-related issues—a key strategy for promoting access to benefits during shifts in public charge policy under the Trump Administration—the City has expended significant resources. In City Fiscal Year 2019 alone (July 2018 through June 2019), the City spent an estimated \$6,000 on public charge-related trainings for attorneys and non-attorney navigators contracted to provide services under the ActionNYC program. In addition, during the same time period, providers spent an estimated 1,011 hours of attorney time and 2,021 hours of navigator

time on matters related to immigration benefits where public charge is a ground of inadmissibility, for an approximate total cost to the City of \$114,200.

Question Three. What costs, if any, has your agency or organization incurred as a result of disenrollment or reduction in enrollment in public benefits programs caused by the public charge ground of inadmissibility, the 1999 Interim Field Guidance, or the vacated 2019 Final Rule? Please provide relevant data.

The lack of clarity in the 2019 Final Rule led to confusion and to certain immigrants disenrolling from benefits. Following publication of the 2019 Final Rule, DOHMH's Office of Health Insurance Services (OHIS) documented requests to disenroll from health insurance programs in direct response to the new policy. Enrollees were referred to NYC's free immigration resource, ActionNYC, for further counsel. However, some beneficiaries ultimately chose to disenroll due to concerns about how enrollment may affect their green card application or work permit status. OHIS reported instances where immigration attorneys advised clients to disenroll from health insurance, incorrectly identifying a risk of future status. This underscores the need for better clarity around who, when, and in response to what factors, public charge policy is to be applied.

NYC Health + Hospitals believes that more New Yorkers may have enrolled in NYC Health + Hospitals' NYC Care program and sought care through Medicaid, CHIP, or other public health insurance programs absent the chilling effects that the Trump Administration's public charge rulemaking efforts created. While specific impacts of the 2019 Final Rule on Medicaid enrollment would be difficult to isolate due to the simultaneous impact of COVID-19 on service utilization volume and Medicaid enrollment policies, an internal analysis of the 2019 Final Rule just before the COVID-19 pandemic estimated that more than 200,000 NYC Health + Hospitals patients could change their behavior even if they were not directly impacted by the rule itself, resulting in an impact ranging from \$50 million to \$187 million in the first 12 months of the rule's application.¹²

Question Four. With respect to the specific types of public benefits overseen by your agency, under what circumstances is the receipt of such benefits relevant, if at all, to assessing whether or not an individual is likely at any time to become a public charge?

It is the City's position that none of the public benefits referenced below, overseen by agencies contributing to this comment, are relevant to assessing whether an individual is likely to become a public charge. As an initial matter, use of public benefits is not a mandated statutory factor which must be considered when determining whether an individual is a public charge. *See* 8 USCS § 1182(a)(4)(B). The inclusion of additional public benefits in the now vacated 2019 Final Rule created mass confusion over which public benefits (and for which time period and household members) would be considered in the public charge analysis. The inclusion of these benefits forced many individuals to make an unconscionable choice between their immigration status or applying for necessary benefits that would allow them to feed or house their families or obtain essential healthcare.

¹² Declaration of Dr. Mitchell Katz at pages 6-7, *State of New York v United States Department of Homeland Security*, No 1:19-cv-07777-GBD (S.D.N.Y., Sept. 9, 2019).

Non-cash benefits

Non-cash benefits, including Medicaid and Supplemental Nutrition Assistance Program (“SNAP”), are not relevant to assessing whether an individual is likely to become a public charge. Receipt of limited governmental assistance, particularly in the form of food, housing, and health insurance subsidies, enables immigrants and their children to maintain employment, continue healthy and stable lives, and to contribute fully to the federal, state, and local economies. Rather than inhibiting self-sufficiency, these benefits help immigrants achieve their full economic potential, and have a “multiplier effect” that helps to stimulate state and local economies.¹³ By providing supplemental nutrition benefits, state and local governments promote positive health outcomes and prevent conditions like obesity, diabetes, and malnutrition, which can limit an individual’s ability to work. Congress has specified, in particular, that SNAP shall not be considered against recipients as income or resources under any federal, state, or local law.¹⁴ Health insurance coverage contributes to the financial security and stability of many low- and middle-income workers. Not only are insured workers less likely to miss work for health-related reasons, they are also less likely to face exorbitant medical debt when they do seek medical care. The current guidance prohibits DHS from taking into account most non-cash benefits because “non-cash benefits (other than institutionalization for long-term care) are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family.”¹⁵

Medicaid is a crucial safety-net program relied on by nearly 4 million New Yorkers, including pregnant people, people with disabilities, and those with low income. Medicaid helps keep New Yorkers safe and healthy by providing low- and no-cost health care services. Inclusion of this benefit in future public charge determinations would have a disproportionate impact on communities of color in New York City, which already face the detrimental impacts of racism and discrimination in the health care system. Vulnerable New Yorkers may be forced to disenroll from Medicaid coverage, increasing the uninsured rate and placing greater strain on state and local safety-net funding streams. Medicaid—even for institutional long-term care—should not be considered in a public charge determination. Having any type of Medicaid coverage included will cause confusion and could result in a chilling effect on access to crucial health care programs for applicants.

Including Medicaid in public charge determinations would also cause confusion for individuals with other types of insurance. New Yorkers may fear that any interaction with the health system could trigger a public charge determination. In a 2020 survey of immigrant-serving organizations, 44% reported avoiding emergency Medicaid (a program that covers only emergency services for individuals who do not qualify for Medicaid due to their immigration

¹³ Declaration of Steven Banks at pages 6-8, *State of New York v United States Department of Homeland Security*, No 1:19-cv-07777-GBD (S.D.N.Y., Sept. 9, 2019).

¹⁴ *See* 7 USCS § 2017(b).

¹⁵ *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28,692 (Mar. 26, 1999).

status).¹⁶ In the same survey, 41% reported avoiding free or low-cost medical care for the uninsured, and 37% reported avoiding ACA marketplace health insurance coverage. The ripple effects of sowing confusion in health care could be catastrophic for immigrant communities.

The receipt of Medicaid itself does not necessarily insinuate reliance on the government for subsistence, and the use of punitive action against Medicaid beneficiaries directly contradicts the federal government's stated public health goals. Publicly available data accentuate the pandemic's inequitable impact, with observable disparities in testing, treatment, and vaccination rates among communities of color and immigrant-heavy neighborhoods. Barriers, such as punitive immigration policy, may further exacerbate existing gaps in care.

Similarly, consideration of rental or other housing subsidy is not relevant to assessing whether or not an individual is likely at any time to become a public charge. If DHS opts to include housing assistance in its public charge assessment, there will be a chilling effect on households seeking any and all housing assistance. Jeopardizing affordable housing access, whether through lack of supply, lack of access, or the chilling effect of public charge, will have negative public health impacts on immigrants and their families across the country, particularly the most vulnerable: adults with medical conditions and children. This chilling effect on affordable housing access will also result in increases in homelessness and push more households into exploitative, unsafe, and illegal housing conditions. When individuals and families do not have access to stable housing, they may become involved with other crisis systems, such as the hospital and emergency shelter systems. From a public administration standpoint, these are costly public services that are not substitutes for stable housing. Stable housing has demonstrated that it can break the costly cycle of service use. In sum, including housing assistance in DHS' public charge assessment would result in negative public health impacts, especially for the most vulnerable, and increase homelessness amongst immigrants, strain public resources, and limit the City's ability to successfully administer a "Housing First" policy of providing supportive housing as a platform for health and recovery.

Furthermore, federal law and HUD regulations require that the public housing rents or Section 8 tenant shares of "mixed families" (those including at least one member without eligible immigration status) be prorated so that those lacking eligible status are not receiving federal housing benefits. Including housing assistance in the public charge assessment risks deterring these families from utilizing programs they are eligible for, and subverts the existing statutory and regulatory approach for managing immigrant eligibility for these programs.

Cash assistance benefits

As a matter of public policy, cash assistance benefits should also not be included in the public charge analysis as they are not relevant to assessing whether a person is or will be a public charge. Receipt of cash assistance is not one of the limited statutory factors to be considered when determining whether an individual is a public charge. *See* 8 USCS § 1182(a)(4)(B). The only factors listed are age; health; family status; assets, resources, and financial status; education

¹⁶ Hamutal Bernstein, Urban Institute, Immigrant-Serving Organizations' Perspectives on the COVID-19 Crisis (2020), https://www.urban.org/sites/default/files/publication/102775/immigrant-serving-organizations-on-the-covid-19-crisis_1.pdf.

and skills. *Id.* Cash assistance is temporary in nature. *See* 42 USCS § 601(a)(2); SSL§ 331(1). The purpose of cash assistance is to end dependence on government benefits and enable participants to become self-sufficient. *See* 42 USCS § 601(a)(2); 42 USCS 602(a)(1)(A)(i); and NY SSL§ 331(1). To promote self-sufficiency, cash assistance programs require, with certain exemptions, that recipients engage in work and employment opportunities. *See* 42 USCS 602(a)(1)(A)(i) ;NY SSL § 335-b(5)(a). The temporary nature, self-sufficiency goals, and the work requirements are contrary to an individual being “primarily dependent on the government for subsistence,” which is the current guidance’s definition of public charge. 62 Fed. Reg. at 28,689. Therefore, the receipt of cash assistance is not dispositive of whether an individual is or will likely become a public charge.

Past receipt of public benefits

At a minimum, past receipt of any public benefits should not be considered in the public charge analysis. The factors to be considered when determining whether an individual is a public charge include age, health, assets, and education, do not suggest a retroactive analysis but rather support an interpretation that the public charge test is prospective in application. *See* 8 USCS § 1182(a)(4)(B). The fact that an individual is no longer a recipient of a public benefit shows that the individual has fulfilled the purpose of the supplemental benefits and become self-sufficient. Therefore, past receipt of any public benefits, including cash assistance benefits, is not relevant to assessing whether an individual is a public charge. In addition, benefits utilized while an applicant was a child should not be considered.

Question Five. What, if any, specific concerns does your agency or organization have about how DHS applies the public charge ground of inadmissibility and how should DHS address those concerns?

The manner in which DHS defines “public charge” and assesses likelihood of an individual becoming a public charge should avoid perpetuating historical, institutionalized racism and bias against low-income immigrants of color. Rather than creating a “wealth test” for applicants, DHS’ public charge policy should reflect the reality of immigrants’ positive economic contributions, which tends to increase when immigrants become LPRs and, later, U.S. citizens. Indeed, for individuals who naturalize, research shows that individual annual earnings increase by an average of 8.9% or \$3,200; the employment rate rises 2.2%; and homeownership increases 6.3%.¹⁷ If all eligible-to-naturalize immigrants in New York City were to become U.S. citizens, annual city, state, and federal tax revenue would increase by \$789 million and public benefits costs would decrease by \$34 million, for a net benefit of \$823 million per year.

The 2019 Final Rule caused mass confusion over which benefits were included and for which household members the rule applied. For that reason, it was burdensome for DSS to provide documentation for clients regarding received benefits for submission to the federal

¹⁷ Maria E. Enchautegui, Linda Giannarelli, *The Economic Impact of Naturalization on Immigrants and Cities* (2015), available at <https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities>.

government. It is the position of DSS that no benefits it administers should be included in the public charge analysis. However, to the extent any DSS benefits are included, it is the agency's recommendation that DHS rely on client attestation, rather than making immigrants go through the onerous process of obtaining documentation, which is both burdensome for immigrants and for the agency.

Question Six. What data does your agency or organization have that can be shared to demonstrate any potential impact of the public charge ground of inadmissibility, the 1999 Interim Field Guidance, or the vacated 2019 Final Rule on applications for or disenrollment from public benefits by individuals who are eligible for such benefits?

The City's analysis revealed declines in enrollment among non-citizens in two key programs, correlating with the regulatory process and effective date of the 2019 Final Rule.

Declines in SNAP enrollment

DSS saw the fear and confusion surrounding the proposed and final 2019 rule on public charge exemplified in its SNAP caseload. Most SNAP recipients are not subject to the public charge analysis because of SNAP's eligibility requirements. However, from 2017 to 2019, the City's SNAP caseload experienced a drop in usage among eligible non-citizen New Yorkers and their families.¹⁸

DSS's data on SNAP participation showed that between January 2017 and January 2019, SNAP cases headed by non-citizens decreased over 15%. By contrast, SNAP cases headed by citizens decreased approximately 1%. The drop-off rate among non-citizen headed households was thus over ten times higher than the rate among citizen headed households. From 2020-2021, while the overall SNAP caseload increased, the increase for non-citizen headed cases was smaller than for citizen headed cases, at 9% vs. 13%, respectively.

Declines in Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) enrollment

In February 2020, DOHMH and MOIA released a report showing a decline in enrollment in WIC across zip codes with high density of non-citizens.¹⁹ In zip codes with the highest number of non-citizens, where WIC enrollment had already been decreasing (-0.34% per month since September 2012), the decline accelerated in the summer of 2017 (-1.0% per month) through 2019. Comparatively, in zip codes with the fewest number of non-citizens, where enrollment had already been decreasing (-0.3% per month since 2017), rates began to rise in February 2019 (+1.16% per month). Although WIC was ultimately excluded as a triggering benefit in the 2019 final public charge rule, fears around public benefit use—especially food assistance (i.e., SNAP *was* included)—led to a marked chilling effect across other, non-targeted

¹⁸ Declaration of Steven Banks at pages 4-6, *State of New York v United States Department of Homeland Security*, No 1:19-cv-07777-GBD (S.D.N.Y., Sept. 9, 2019).

¹⁹ NYC Department of Health, NYC Mayor's Office of Immigrant Affairs, NYC Department of Health & Mental Hygiene, Fact Sheet: WIC Enrollment Trends in New York City (2020), available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/fact-sheet-wic-enrollment-trends-february-2020.pdf>.

social service programs. These data show the potential for unintended and magnifying impact on public benefit usage among already underserved communities.

Question Eight. How should DHS reduce the possibility that individuals who are eligible for public benefits overseen by your agency would decide to forgo the receipt of those benefits out of concern that receipt of such benefits will make them (or a family member or household member) inadmissible on public charge grounds, even if receipt of such a benefit would not be considered by DHS in a public charge determination, or would not be a decisive factor in a public charge inadmissibility determination?

To avoid undermining the City's pandemic recovery effort, and to combat entrenched disparities in health, well-being, and economic outcomes of immigrants, it is critical that DHS take concrete steps to significantly reduce confusion and fear related to the public charge rule, so that the rule is not a barrier to immigrants and their families seeking the support they need. Unfortunately, as evident from the City's experience and as reflected in others' research conducted during the height of the pandemic, the 2019 Public Charge Rule may continue to have lasting impacts on immigrants' access to benefits.²⁰

Indeed, despite the narrow technical scope of the rule, news headlines and rumors about public charge beginning as early as 2017 have had a chilling effect in immigrant communities, causing many immigrants to disenroll from benefits with reports of immigrants avoiding seeking health care due to fear, including for COVID-19 related benefits and services. Recently released U.S. Census Bureau data show a drop in usage of Medicaid, TANF, and SNAP by noncitizens and their U.S.-born children. Researchers from the Migration Policy Institute found that during the first three years of the Trump administration, participation in these programs declined twice as fast among noncitizens as citizens.²¹ In New York State in that time period, there was a 28% drop of low-income, noncitizen participants in Medicaid, CHIP, or other public health insurance programs, and a 21% drop of U.S.-born children with a noncitizen household member. The impact on SNAP enrollment was even higher, with a 37% drop of low-income, noncitizen participants and a 24% drop in US-born children living with noncitizens.

To overcome this reality, DHS should undertake the below-listed approaches.

Remove public benefits from the public charge analysis

See response to question four. Receipt of public benefits should not be included in the determination of whether an individual is a public charge. Removing receipt of public benefits from a public charge analysis would combat any chilling effect because it would allow immigrants to apply for benefits without fear of repercussions affecting their immigration status.

²⁰ Hamutal Bernstein, Urban Institute, Immigrant-Serving Organizations' Perspectives on the COVID-19 Crisis (2020), https://www.urban.org/sites/default/files/publication/102775/immigrant-serving-organizations-on-the-covid-19-crisis_1.pdf.

²¹ Migration Policy Institute tabulation of data from the U.S. Census Bureau's 2016, 2017, 2018, and 2019 ACS, available at [https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real.\(New_York_State_dataset_available_for_download.\)](https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real.(New_York_State_dataset_available_for_download.))

Make the public charge determination clear, simple, and specific

DHS should seek to apply the different factors that are included in the public charge determination as clearly and with as much specificity as possible in efforts to reduce the likelihood that eligible non-citizens would decide as a result not to apply for benefits. DSS has received feedback from numerous community partner organizations that non-citizens have delayed or refrained from applying for benefits out of concern that the receipt of such benefits would impact a public charge determination, and much of this concern has come from misunderstanding how the determination is made. Moreover, any new rule should be as straightforward and specific as possible as to what and how factors are considered. This emphasis would assist immigrants in better understanding to whom the determinations would apply, and enable them to be better informed when deciding when and how to seek necessary benefits.

If benefits are considered, educate the public about which are and are not considered

Should DHS enact a rule that does consider public benefits, it should provide clear messaging as to which specific public benefits will be considered, and make clear that only benefits on that enumerated list will be considered.

In light of constituent and stakeholder concerns about specific benefits during the pandemic, NYC sought clarifications from DHS related to whether the federally-funded Pandemic Electronic Benefit Transfer (P-EBT) and Emergency Rental Assistance Program (ERAP) would be considered in DHS' public charge analysis. To alleviate the risk of confusion or fear leading to a chilling effect on usage of these and other programs, DHS should intentionally and proactively work with benefits granting agencies to ensure that clear, comprehensive information is available about whether a public benefit is considered in DHS' public charge analysis; publish a non-exhaustive list of benefits that are not considered; and maintain a streamlined mechanism for submitting questions about federal benefits if not on the list.

In addition, DHS should clarify in regulations that benefits used by a household member will not be considered in an individual's public charge assessment.

Clearly enumerate statuses that will not face a public charge assessment

DSS has received feedback from community partner organizations that otherwise eligible non-citizen New Yorkers have delayed or refrained from applying for benefits due to a mistaken impression that they would be subject to a public charge determination and thus be adversely impacted. To limit this misperception, DHS should emphasize in all materials that public charge determinations are limited only to determinations of eligibility for legal permanent residence.

Allocate resources for ongoing public education

DHS should allocate resources for consistent, regular communication with the public to continue combatting fear and confusion. Messaging content and methods should be informed by

research and the perspectives of impacted communities (see above description of MOIA's messaging research). Information should be easily available in languages other than English (see above description of the City's public charge materials, translated into 15 languages).

Conclusion

As evident from New York City's experience, the public health, economic, and human costs of recent changes to public charge policy are hard to overstate. At this time when governments and benefits granting agencies work toward recovery from the COVID-19 pandemic, it is particularly crucial that DHS ensure that future regulations on public charge inadmissibility do not deter immigrant communities from seeking the services and benefits they need, or from pursuing permanent status.